



April 9, 2009

Via US Mail and E-mail

Mr. Gerard Thibeault
Executive Officer
California Regional Water Quality Control Board, Santa Ana Region
3737 Main Street, Suite 500
Riverside, CA 92501-3348

Mayor
Mark Tetterer

Mayor Pro Tem
Peter Herzog

Council Members
Richard Dixon
Kathryn McCullough
Marcia Rudolph

City Manager
Robert C. Dunek

Subject: Comments on Second Draft Order No. R8-2008-0030, Waste Discharge Requirements for the County of Orange, Orange County Orange County Flood Control District and The Incorporated Cities of Orange County within the Santa Ana Region Areawide Urban Stormwater Runoff Orange County

Dear Mr. Thibeault:

The City of Lake Forest ("City") respectfully submits this letter to the Santa Ana Regional Water Quality Control Board ("SARWQCB") to convey the City's formal written comments for the Second Draft of Tentative Order No. R8-2008-0030/NPDES Permit No. CAS618030 ("Draft Permit"). Again, the City sincerely commends the SARWQCB staff for their prudent revisions to the Draft Permit. SARWQCB staff made significant revisions in response to comments from the Copermittees, and other interested parties, to deliver a permit that appears to meet goals to protect the environment while meeting the needs of the regulated community. That being said, the City submitted comments on the first draft of the Permit that were not addressed in the most recent revision. The City's comments on these aspects of the Draft Permit follow.

The City is additionally aware that the County of Orange ("County") is submitting a similar comment letter regarding specific conditions contained in the Permit. The City would like to express its full support for the County's comments and intends the comments contained in this letter to supplement those submitted by the County and the other Permittees. Accordingly, please consider the County's comments to be incorporated in the City's letter by this reference.

COMMENTS

Operation and Maintenance of Post-Construction BMPs

Draft Permit Section XII.I.3 requires the Permittees to "develop a database with information regarding each structural treatment control BMP." This provision is not

clearly defined and appears to require the Permittees to develop a listing of each structural treatment control BMP in the City, no matter when it was constructed. If this is the case, it would impose an unreasonable administrative burden on the City to require it to locate and document each and every structural BMP that has been installed to date. For that reason, the Draft Permit should be revised to require any such database to be prospective, and require only newly constructed BMPs to be included in the database.

Additionally, Draft Permit Section XII.I.5 requires the annual inspection of all public agency structural treatment control BMPs and 50% of priority development project structural treatment control BMPs. While this may be initially feasible with a relatively small number of structural BMPs to inspect, the inventory of structural BMPs and the number of required inspections will increase annually until it becomes infeasible due to staff and resource constraints. For that reason, the City requests that SARWQCB revise the Draft Permit to allow for self inspection and self certification by both the City and by HOAs and other structural BMP owners. The City further requests that SARWQCB revise the Draft Permit to allow the City to use the self certifications and/or inspections as a representative sampling of all structural BMPs in the City.

Deliverables and Submittal Dates are Unnecessarily Aggressive

The Draft Permit includes several deadlines that the City feels are too aggressive and need to be rolled back. These include the six month deadline for the hydrologic condition of concern mapping requirement; and the recently revised twelve month deadline for the Draft Permit's preliminary WQMP requirements. It is the City's position that these deadlines are unreasonably aggressive and are not feasible with the City's current staff and resources. For that reason, the City requests that the Regional Board revisit the deadlines and consider adjustments to the existing reporting process.

WQMP Priority Development Projects

The City has reviewed the revisions to the Permit's Water Quality Management Plan, and Low Impact Development (LID) requirements, and appreciates the flexibility provided by the Permit's Alternatives and In Lieu provisions. Implementing all of the Permit's LID and hydromodification requirements will not be feasible in all situations. The City is especially concerned with Permit section XII.B.2.i. That section requires the Permittees to incorporate the United States Environmental Protection Agency (USEPA) guidance, "Managing Wet Weather with Green Infrastructure: Green Streets" to the maximum extent practicable on any streets, roads, highways and freeways having 5,000 square feet or more of paved surface. Under this low threshold, almost any road construction within the City's boundaries would be required to incorporate the Green Street designs in the USEPA guidance. These design principles include using brick, permeable asphalt, and permeable pavers as preferred construction materials. They also include incorporation of swales and other infiltration BMPs into the road design. While this is a laudable goal, the

design principles advocated in the USEPA guidance are not appropriate in all locations. For example, while permeable pavers, or infiltration friendly brick-work may be appropriate in a "town-center" setting, the limited durability and ongoing maintenance requirements associated with both makes them inappropriate for use in the construction of a new turning lane on a high traffic road.

Coyote Creek TMDL

While the City is not directly impacted by the section of the Draft Permit incorporating Total Maximum Daily Load (TMDL) requirements for Coyote Creek, the City is greatly concerned about the unprecedented application of TMDL requirements of the Los Angeles Regional Water Quality Control Board to portions of the watershed under the jurisdiction of the SARWQCB. If a TMDL is promulgated for watersheds or areas within the jurisdiction of one of the regional boards, it should not be applied to another jurisdiction unless a corresponding TMDL is legally adopted within the jurisdiction, thus affording regulated entities the opportunity to participate in (and if necessary dispute) the adoption of the TMDL.

The Draft Permit Includes Requirements that Exceed Federal Law

The Draft Permit includes numerous requirements that exceed the mandatory requirements imposed by federal law. The SARWQCB clearly has the authority to include such requirements in the Draft Permit, however, when so doing, it must comply with the statutory requirements set forth in the California Porter-Cologne Water Quality Control Act. (*City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal. 4th 613.) Additionally, as such requirements represent state, rather than federal, mandates, if they are included in the final permit, the Permittees are entitled to reimbursement from the State for the costs associated with implementing them. (California Constitution, Article XIII B, § 6.)

Distribution List

It appears that the Saddleback Valley School District was left off of the distribution list. Several other school districts are included on the distribution list, and Saddleback Valley School District should probably be included as well. This will ensure that it is aware of the Draft Permit, and its potential

CONCLUSION

We appreciate your attention to our comments. The City is committed to the goal of water quality improvement and wants to work with the SARWQCB in developing the most prudent and cost effective way to reach that goal. We look forward to receiving your response to the above comments and concerns. If you should have any questions, please contact Devin Slaven, Water Quality Specialist, at (949) 461-3436.

Mr. Gerard Thibeault
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Sincerely,
CITY OF LAKE FOREST

A handwritten signature in black ink, appearing to read 'R. Woodings', with a large, stylized loop at the beginning.

Robert L. Woodings, P.E.
Director of Public Works/City Engineer

cc: Robert C. Dunek, City Manager
Theodore G. Simon, P.E., Engineering Services Manager
Devin E. Slaven, REA, Water Quality Specialist
Chris Crompton, County of Orange, RDMD